

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

**OGC HAS REVIEWED.**

Legislative Counsel

OLC 79-0114/d

25 APR 1979

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

We have received a draft of the most recent changes to Section 5949 and the new Chapter 50 of the Administration's proposed "Classification and Compensation Act of 1979."

While we are pleased to note that cognizance has been taken of our position that the Central Intelligence Agency must be exempted from Section 5949, serious problems remain with regard to the scope and coverage of Chapter 50. On its face, elimination of the Compensation Agent from Chapter 50 would seem to rest the powers described in that Chapter in the President. If this were actually the case we would, of course, take no issue with the proposal. In practice, however, the President undoubtedly will designate an agent to recommend what premium pay and allowance provisions should be established, modified or abolished. It is also clear that this agent will in all likelihood be embodied within the Office of Personnel Management (OPM).

While employment in foreign areas is not covered in Chapter 50, many of CIA's premium pay and allowance provisions would be subject to the Chapter. Thus, the OPM in investigating such pay systems and allowances would, as we have noted previously, gain heretofore unauthorized access to sensitive CIA information and files.


Rather than repeat our previous comments on this subject, I would call to your attention paragraphs three through seven of my letter of 22 March 1979 (copy enclosed). The arguments contained therein, although directed toward the then-proposed Compensation Agent, are of equal applicability to the OPM. Our position on this matter is in conformity with President Carter's expressed desire to limit, indeed to reduce, the proliferation of access to sensitive intelligence information within the government.

The vesting of any authority over Central Intelligence Agency personnel matters in the OPM would create conflict of law problems. Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) gives the Director of Central Intelligence unfettered authority over the Agency's personnel systems. Diminution of this authority would have an inimical affect on the ability of the Agency to carry out its assigned mission and on the ability of the Director of Central Intelligence to fulfill his statutory responsibility for the protection of intelligence sources and methods. Therefore, we again recommend that the draft bill be amended as follows:

Amend Subsection 5001(a) by inserting after the phrase "United States Postal Service": "or an employee of the Central Intelligence Agency".

I would appreciate your advising us as to the intentions of your office regarding this proposed amendatory language.

Sincerely,

  
Legislative Counsel

STATINTL

Enclosure  
As stated

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WASHINGTON, D.C. 20503

Legislative Counsel

22 MAR 1979

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on the most recent draft of the "Classification and Compensation Act of 1979".

I am disappointed to note that the draft falls seriously short of reflecting the Agency's suggestions contained in my letter of 20 January 1979, and communicated in subsequent oral presentations made by members of my staff.

The importance of protecting intelligence sources and methods, and of preserving the flexibility required for the effective conduct of the Central Intelligence Agency's foreign intelligence functions were recognized by both the Administration and the Congress when the Agency was exempted from all of the major provisions of the Civil Service Reform Act of 1978. The same considerations should apply with regard to the Classification and Compensation Act of 1979.

Section 6 of the new draft would add a new Chapter 50 to Title 5 of the United States Code. Under Section 5001, the "Compensation Agent" and its staff would have access to information directly pertaining to intelligence sources and methods. The revisions now contained in the draft (exempting employment in foreign areas with regard to pension pay and allowances in Section 5001(b)) do not adequately meet our needs.

The draft, for example, would eliminate for purposes of the proposed Act the exemption to the rule making provisions of the Administrative Procedure Act contained in Section 553(a). This would result in the subjection of some of CIA's most sensitive material to various forms of public disclosure. Under subsection 553(c) of Title 5, for example, there could be public participation in Agency rule making related to matters covered by the Classification and Compensation Act; a result that would be diametrically opposed to the purposes of both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, and to the position consistently taken by this and previous Administrations on similar matters.

Under the provisions of the latest draft, the Compensation Agent and its staff would also possess, inappropriately in our view, the authority to make recommendations impacting upon the mission and substantive functions of the Central Intelligence Agency. In addition, it is implicit in the draft bill that the Office of Personnel Management's administration of modifications in pay systems or premium pay or allowance provisions under Section 5001 would require continuing access to information pertaining to intelligence sources and methods and could place OPM in the position of affecting substantive Central Intelligence Agency functions.

The Central Intelligence Agency must retain maximum flexibility to carry out its mission and functions successfully, a fact which has been reflected in Administration policy in areas such as those covered by the draft Classification and Compensation Act. The flexibility of the Director under 50 U.S.C. 403j to operate and adapt the Central Intelligence Agency's personnel system in order to meet the Agency's unique personnel requirements and the ever-shifting exigencies of intelligence collection and foreign affairs would be seriously impaired by Section 5001.

I strongly urge, therefore, acceptance of the following amendments:

1. Section 5001(a): Line 13 on page 40 of the March OMB draft should be amended as follows:

"...States, but does not mean an employee of the Central Intelligence Agency."


2. Section 5949(a) "Staffing Differentials:  
Line 21 on page 32 should, for the same reasons  
outlined above in connection with Section 5001(a),  
be amended to read:

"...prescribe, but does not include  
compensation systems of the Central Intelligence  
Agency."

The opportunity to again comment on this draft bill is appreciated. We firmly believe that the amendments specified above must be made in order to prevent the erosion of key statutory authorities of the Director of Central Intelligence and to preserve the flexibility which is critical to successful accomplishment of the Central Intelligence Agency's mission. We stand ready to provide whatever further assistance may be necessary.

Sincerely,

SIGNED

  
Legislative Counsel

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Under existing law, the President has the authority to do by executive order what is being proposed by the amendment in question without the limitations imposed by the amendment. The amendment, in effect, shifts that authority from the President to Congress, which he has no authority to do. The amendment to the statute will not only further limit the President's authority -

Exemption of overseas personnel is more shadow than substance because the basic regulations governing premium pay and allowances are implemented uniformly on a global basis.

The agency could be required to pay enormous amounts of overtime because the nature of much of the work cannot be performed in a normal 8 hour day. This applies to DC based personnel who have to respond to communication for the field. Time differences. Number of uncompensated overtime now performed: - - -

Would give an outsider authority to change these laws & regs governing overtime

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required instant advice.

DC based personnel <sup>extended</sup> TADYs. Are they exempt as overseas?

This law would take away Agency's flexibility in making adjustments to meet these situations.

1 HQS and operations officer on country desks supporting field stations in other time zones serve overtime as required by their field stations' needs for instant advice.

Under present law, the Pres can accomplish same thing by Exec Order. Proposed change would provide statutory limitations on that power. In effect, it is a proposal for a congressional limitation on the President's current authority.

Imposes burden on Pres to administer certain payroll functions now the prerogative of the DCI. Since Pres otherwise occupied, he would be required to delegate. If he delegated to DCI, arrive back where started. A farce! Taking away some of DCI's authority to delegate it back to him. If delegated to someone else, creates problems of security as well as problem of flexibility in Agency's personnel policies.

In dealing with President's delegate, Agency would be required to expose types of cover arrangements, methods of operating, etc.

Field regs same as HQS regs, so definite impact on the field stations + overseas personnel.

Taking away this part of DCI's authority would have negative impact on his ability to carry out Agency's mission.

The Administration's proposed "Classification and Compensation Act of 1979", according to the most recent draft by OMB, purports to give the President certain authority to accomplish some things which, under preexisting law, he already has authority to accomplish by Executive order. ✓



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*AVAILABLE*

(C) by striking out "which is not (1) in excess of 8 hours; or (2) overtime work is defined by section 5542(a) of this title".

(h) Section 5547 is amended to read as follows:

"An exempt employee paid under subchapter III of chapter 53 or chapter 54 of this title may be paid premium pay under sections 5542, 5545(a)-(c), and 5546(a) and (b) of this title only to the extent that the payment does not cause the employee's aggregate rate of pay for any pay period to exceed the maximum rate for GS-15."

(i) Section 5548(b) is amended by striking out "sections" and inserting in lieu thereof "section" and by striking out "and 5550".

(j) Section 5550 is repealed.

(k) Section 5596 is amended in subsection (b)(1) by striking out "or reduction" and inserting in lieu thereof ", reduction or denial".

(l) Section 5941(b) is amended by inserting after "of this title" the following: ", or an employee whose pay is set in accordance with a locality pay schedule established under section 5305 of this title or a local Special Occupational Service pay schedule established under subchapter IX of chapter 53 of this title,".

(m) Chapter 59 is amended by adding at the end thereof the following new section:

✓ "Sec. 5949. Staffing differentials

"(a) For the purpose of this section, "employee" and "position" include employees and positions under the statutory compensation systems

2 systems as the Office of Personnel Management may prescribe; but not  
3 under--

4 "(1) the Central Intelligence Agency;

5 "(2) the United States Postal Service; and

6 "(3) the Senior Executive Service as defined in section 2101a  
7 of this title.

8 "(b) Upon determining that the Government is experiencing significant  
9 difficulty in recruiting or retaining well-qualified individuals, the  
10 Office may establish and thereafter, through periodic review, adjust or  
11 abolish staffing differentials for one or more employees or positions,  
12 as occupationally, organizationally, and geographically appropriate.

13 "(c) Under service agreements or such other procedures as the  
14 Office shall prescribe, staffing differentials established under this  
15 section may be paid in one or more lump-sums or in the same manner and  
16 at the same time as basic pay.

17 "(d) Any differential paid under this section is in addition to  
18 basic pay and is not an equivalent increase within the meaning of section 5335(  
19 of this title. The aggregate differential payable to any employee in  
20 any twelve month period, when combined with the employee's annual rate  
21 of basic pay may not exceed the annual rate of basic pay for GS-18 as  
22 established under section 5305 of this title, without regard to section 5308  
23 of this title.

24 "(e) The Office of Personnel Management shall prescribe regulations  
25 to carry out the provisions of this section."

Chapter 50 - Special Authority

"Sec. 5001. Premium pay and allowances special authority

"(a) For the purpose of this section, 'employee' means a civil service employee in the executive branch of the Government of the United States, except an employee of the United States Postal Service.

"(b) Notwithstanding any other provision of law, the President may establish, modify, consolidate, or abolish Federal premium pay and allowances provisions, except those relating to employment in foreign areas, pertaining to an employee in order to eliminate conflicting or contradictory requirements, provide for adjustment of Federal provisions in light of the non-Federal sector practices and any special requirement of the Federal service, or provide equitable premium compensation to all Federal employees working under similar circumstances.

"(c) Action taken by the President to establish, modify, consolidate, or abolish Federal premium pay and allowances provisions, except those relating to employment in foreign areas, shall modify, supersede, or render inapplicable, as appropriate, any provision of law or prior action by the President under this section which is inconsistent with the action taken by the President.

"(d) The President shall transmit a report to the Congress when he takes action under this section."

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting before the item relating to chapter 51 the following new item:

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16 amended title 5, United States Code, to extend the pay comparability concept to a total compensation comparability concept encompassing both pay and benefits, and for other purposes.

1       Be it enacted by the Senate and House of Representatives of the  
2       United States of America in Congress assembled, That this Act may be  
3       cited as the "Federal Employees Compensation Reform Act of 1979".

4       Sec. 2. Pay Systems Amendments

5           (a) Section 5301 is amended to read as follows:

6       "Sec. 5301. Definition; policy; purpose

7           "(a) Total compensation means the combined value of pay and  
8       benefits.

9           (b) Benefit means an item of employee compensation other than  
10       basic pay and premium pay.

11          "(c) It is the policy of Congress that the total compensation of  
12       Federal employees under this chapter, with the exception of sections 5307  
13       and 5342(a)(2)(B) and (C) of this title and subchapters II, VII and VIII  
14       of this chapter, be fixed and adjusted from time to time in a manner  
15       consistent with the public interest based on the principles that--

16           "(1) Federal total compensation be comparable with non-  
17       Federal total compensation on the basis of appropriate groups of  
18       Federal employees;

19           "(2) Federal total compensation be the same for similar kinds  
20       and levels of Federal work within a designated pay area;

21           "(3) pay distinctions be maintained in keeping with work and  
22       performance distinctions; and

23           "(4) total compensation for the statutory compensation systems  
24       be interrelated.

25       "(d) The Federal compensation program is to provide  
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1 total compensation which is equitable and adequate for recruiting and  
2 retaining a well-qualified workforce.

3 "(e) For the purposes of this subchapter, 'statutory compensation  
4 system' means a compensation system under--

5 "(1) subchapter III of this chapter, relating to the General  
6 Schedule;

7 "(2) subchapter IV of chapter 14 of title 22, relating to  
8 the Foreign Service of the United States; or

9 "(3) chapter 73 of title 38, relating to the Department of  
10 Medicine and Surgery, Veterans' Administration.

11 "(f) The total compensation of each statutory compensation system  
12 shall be fixed and adjusted in accordance with the principles of sub-  
13 section (c) of this section and the provisions under sections 5305,  
14 5306, 5308, and 5309 of this title."

15 (b) Section 5303 is repealed.

16 (c) Section 5304 is amended to read as follows:

17 "Sec. 5304. Presidential policies; regulations

18 "Subject to such policies as the President may prescribe, the  
19 Office of Personnel Management and such other agencies as the President  
20 may designate, shall issue regulations necessary for the administration  
21 of the provisions of this subchapter."

22 (d) Section 5305 is amended--

23 (1) in the catchline by striking out "pay" and inserting in  
24 lieu thereof "compensation";

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(2) by striking out "pay" each time it appears and inserting

1           in lieu thereof "compensation";

2           (3) by amending subsections (a)(1)(A) and (a)(1)(B) to read  
3 as follows:

4           "(A) compares, on the basis of appropriate surveys or  
5 other measures of non-Federal pay, pay change and benefits  
6 that shall be provided by the Bureau of Labor Statistics or  
7 obtained from other sources as determined to be appropriate by  
8 the President--

9           "(i) the rates of pay of the statutory compensation  
10 systems, as defined in section 5301(e) of this title,  
11 with non-Federal rates of pay for similar kinds and  
12 levels of work within a designated pay area; and

13           "(ii) the estimated value of Federal benefits with  
14 the estimated value of non-Federal benefits;

15           "(B) makes recommendations for appropriate adjustments  
16 in pay and benefits for the statutory compensation systems  
17 and";

18           (4) by amending subsection (a)(2) to read as follows:

19           "(2) after considering the report of his Agent and the find-  
20 ings and recommendations of the Advisory Committee on Federal  
21 Compensation reported to him under section 5306(b)(3) of this  
22 title, adjust the total compensation of each statutory compensation  
23 system in accordance with the principles under section 5301(c)  
24 of this title, effective as of the beginning of the first applicable

25           pay period commencing on or after October 1 of the applicable year,

1 by adjusting the rates of pay of each statutory compensation system  
2 or by making such adjustments as he deems appropriate under  
3 section 5309 or by an appropriate combination of such adjustments;  
4 and";

5 (5) by amending subsection(a)(3) to read as follows:

6 "(3) transmit to Congress a report of the compensation adjust-  
7 ment, specifying the percentage adjustments in the rates of pay and  
8 the adjustments in benefits under the General Schedule and under  
9 the other statutory compensation systems, together with a copy of  
10 the report submitted to him by his Agent and the findings and  
11 recommendations of the Advisory Committee on Federal Compensation  
12 reported to him under section 5306(b)(3) of this title.";

13 (6) in subsection (b)--

14 (A) by striking out "Pay Council" each time it appears  
15 and inserting in lieu thereof "Compensation Council";

16 (B) by striking out "agent" and inserting in lieu  
17 thereof "Compensation Agent";

18 (C) by redesignating paragraphs (1) through (4) as  
19 paragraphs (2) through (5), respectively; and

20 (D) by inserting before paragraph (2) (as redesignated by  
21 this section) the following:

22 "(1) define, as appropriate, the boundaries of individual  
23 local pay areas for employees under the statutory compensation  
24 systems;"



1 inserting after "represent" the following: ", in the case of labor  
2 organizations, or include in their membership, in the case of other  
3 organizations," and by inserting after "represented by" the following  
4 "or included in";

5 (8) by amending subsection (b)(3)(as redesignated by this  
6 section) to read as follows:

7 "(3) provide for meetings with the Federal Employees Com-  
8 pensation Council and give thorough consideration to the views and  
9 recommendations of the Council and the individual views and recommenda-  
10 tions, if any, of the members of the Council regarding--

11 "(A) the types of benefits to be included in benefit  
12 surveys conducted by the Bureau of Labor Statistics under  
13 section 5305(a)(1)(A) of this title;

14 "(B) the coverage of pay and benefit surveys for the  
15 statutory compensation systems conducted by the Bureau of  
16 Labor Statistics (including, but not limited to, the occupations,  
17 establishment sizes, industries, and geographical areas to be  
18 surveyed);

19 "(C) the process of comparing rates of pay of the statu-  
20 tory compensation systems with non-Federal rates of pay for  
21 similar kinds and levels of work within a designated pay area;

22 "(D) the adjustments in benefit provisions that should  
23 be made and the relationship of the value of benefits to  
24 pay adjustments for the statutory compensation systems; and

25 "(E) the adjustments in the rates of pay of the statutory

1 compensation systems that should be made to achieve compara-  
2 bility between Federal total compensation and non-Federal  
3 total compensation.";

4 (9) in subsection (b)(4) (as redesignated by this section)  
5 by striking out "(2)(A)-(C)" and inserting in lieu thereof "(3)(A)-(E)"

6 (10) by amending subsection (c)(1) to read as follows:

7 "(c)(1) If, because of national emergency or economic conditions  
8 affecting the general welfare, the President should, in any year,  
9 consider it inappropriate to make the compensation adjustments  
10 required by subsection (a) of this section or the compensation  
11 adjustments authorized under sections 5309, 5343, and 5394 of this  
12 title, he shall prepare and transmit to Congress before September 1  
13 of that year such alternative plan with respect to compensation  
14 adjustments as he considers appropriate, together with the reasons  
15 therefor, in lieu of the compensation adjustments required by  
16 subsection (a) of this section or sections 5309, 5343, and 5394 of  
17 this title. The report transmitted to the Congress under this  
18 subsection shall specify the percentage adjustments in the rates of  
19 pay under the statutory compensation systems, the Prevailing Rates  
20 Systems, and the Special Occupational Services, and shall specify  
21 adjustments in benefits under section 5309 of this title.";

22 (11) in subsection (c)(2) by striking out that portion of the  
23 first sentence which follows "transmitted," and inserting in lieu

24 thereof "Congress adopts and the President approves a joint resolution  
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25 disapproving the alternative plan or, in the event the President

1 returns the joint resolution to Congress with his objections, two-  
2 thirds of each House of Congress agree to pass and approve the  
3 joint resolution. Upon such a joint resolution becoming law, the  
4 compensation adjustments for the statutory compensation systems,  
5 the Prevailing Rate Systems, and the Special Occupational Services  
6 shall be made in accordance with subsection (m) of this section.";

7 (12) in subsections (d)-(k) by inserting before "resolution"  
8 and "resolutions" each time they appear the following: "joint";

9 (13) by amending subsection (l) to read as follows:

10 "(1) The rates of pay and benefit provisions which become  
11 effective under this section are the rates of pay and benefit  
12 provisions applicable to each position concerned, and each class of  
13 positions concerned, under a statutory compensation system.";

14 (14) by amending subsection (m) to read as follows:

15 "(m) If a joint resolution disapproving an alternative plan  
16 becomes law as provided in subsection (c)(2) of this section, the  
17 President shall, in lieu of such alternative plan, adjust the rates  
18 of pay of the statutory compensation systems by appropriate amounts  
19 reflecting the changes that have occurred in non-Federal pay for  
20 the various levels of work during the twelve-month period preceding  
21 the most recent national survey or other measure of non-Federal pay  
22 described in subsection (a)(1)(A) of this section, as such changes  
23 have been measured under subsection (a)(1)(A) of this section.

24 Such adjustments shall be effective as of the beginning of the  
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first applicable pay period beginning either on or after the date

1 on which the joint resolution becomes law, or on or after October 1,  
2 whichever is later. Compensation adjustments for the Prevailing  
3 Rate Systems, and the Special Occupational Services shall be made  
4 in amounts and at times determined to be appropriate to provide  
5 equitable treatment in relationship to the treatment afforded the  
6 statutory compensation systems under the first sentence of this  
7 subsection.";

8 (15) in subsection (n) by inserting after "rates of pay" the  
9 following: "or benefit provisions";

10 (16) in subsection (n)(1) by striking out "increases" and  
11 inserting in lieu thereof "adjustments"; and

12 (17) in subsection (o) by inserting after "section" the  
13 following: "and benefit provisions under section 5309 of this  
14 title".

15 (e) Section 5306 is amended--

16 (1) in the catchline by striking out "Pay" and inserting  
17 in lieu thereof "Compensation";

18 (2) in subsection 5306(a) by striking out "Pay" and inserting  
19 in lieu thereof "Compensation";

20 (3) in subsection 5306(b)(1) by striking out "agent" and  
21 inserting in lieu thereof "Compensation Agent"; and

22 (4) in subsection 5306(b)(2) by adding "and benefit" after  
23 "pay" and by striking out "agent" wherever it appears and inserting  
24 in lieu thereof "Compensation Agent".

1 thereof the following new section:

2 "Sec. 5309. Adjustment of benefits; effect on pay-fixing authorities

3 "(a) Notwithstanding any other provision of law, in order to carry  
4 out the policy and purpose stated in section 5301 of this title, the  
5 President may establish new employee benefits and modify or discontinue  
6 existing employee benefit provisions, except those relating to retirement  
7 benefits, including, but not limited to, provisions relating to the  
8 types and amounts of benefits and the contributions for benefits.

9 Presidential actions under this subsection are applicable to Federal  
10 employees as defined in sections 5102 and 5342(a)(2)(A) of this title,  
11 but are not applicable to employees paid under section 5307 of this  
12 title or subchapters II, VII of this chapter. Grouping of  
13 employees for benefit provisions established, modified, or discontinued  
14 under this section shall be determined and, when appropriate, adjusted  
15 by the President. Except for employees covered under section 5305(a)(2)  
16 of this title, the President shall prescribe the effective dates of the  
17 adjustments for individuals who are covered by a benefit adjusted under  
18 this section.

19 "(b) Adjustments under this section shall be based on data provided  
20 by the Bureau of Labor Statistics or obtained from other sources as  
21 determined to be appropriate by the President under section 5305(a)(1)(A).

22 "(c) Actuarial and economic assumptions used in benefit evaluations  
23 shall be to the extent possible in accordance with assumptions made  
24 under subpart C of part II of title I of the Budget and Accounting

25 Procedures Act of 1950, as amended.  
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1           "(d) The President shall transmit to each House of Congress a  
2 report which discusses each proposed adjustment under these provisions.  
3 Any such adjustment becomes effective as of the first day of the first  
4 applicable pay period commencing on or after October 1 of the applicable  
5 year for employees covered by section 5305(a)(2) of this title, or as of  
6 such date or dates as the President may prescribe for other employees  
7 covered by this section unless, before the end of the first period of 30  
8 calendar days of continuous session of Congress after the date on which  
9 the report is transmitted, Congress adopts and the President approves a  
10 joint resolution disapproving the proposed adjustment or, in the event  
11 the President returns the joint resolution to Congress with his objections,  
12 two-thirds of each House of Congress agree to pass and approve the joint  
13 resolution. The continuity of a session is broken only by an adjournment  
14 of the Congress sine die, and the days on which either House is not in  
15 session because of an adjournment of more than 3 days to a day certain  
16 are excluded in the computation of the 30-day period.

17           "(e) Subsections (f)-(1) of this section are enacted by Congress--

18                 "(1) as an exercise of the rulemaking power of the Senate and  
19 the House of Representatives, respectively, and as such they are  
20 deemed a part of the rules of each House, respectively, but applicable  
21 only with respect to the procedure to be followed in the House in  
22 the case of joint resolutions described by this section; and they  
23 supersede other rules only to the extent that they are inconsistent  
24 therewith; and

25                 "(2) with full recognition of the constitutional right of

1           either House to change the rules (so far as relating to the procedure  
2           of that House) at any time, in the same manner, and to the same  
3           extent as in the case of any other rule of that House.

4           "(f) If the committee, to which has been referred a joint resolution  
5           disapproving the benefit adjustments proposed by the President, has not  
6           reported the joint resolution at the end of 10 calendar days after its  
7           introduction, it is in order to move either to discharge the committee  
8           from further consideration of the joint resolution or to discharge the  
9           committee from further consideration of any other joint resolution with  
10          respect to the same benefit adjustments which has been referred to the  
11          committee.

12          "(g) A motion to discharge may be made only by an individual  
13          favoring the joint resolution, is highly privileged (except that it may  
14          not be made after the committee has reported a joint resolution with  
15          respect to the same recommendation), and debate thereon is limited to  
16          not more than 1 hour, to be divided equally between those favoring and  
17          those opposing the joint resolution. An amendment to the motion is not  
18          in order, and it is not in order to move to reconsider the vote by which  
19          the motion is agreed to or disagreed to.

20          "(h) If the motion to discharge is agreed to, or disagreed to, the  
21          motion may not be renewed, nor may another motion to discharge the  
22          committee be made with respect to any other joint resolution with respect  
23          to the same benefit adjustments.

24          "(i) When the committee has reported, or has been discharged from  
25          further consideration of, a joint resolution with respect to benefit  
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1 adjustments, it is at any time thereafter in order (even though a previous  
2 motion to the same effect has been disagreed to) to move to proceed to  
3 the consideration of the joint resolution. The motion is highly privileged  
4 and is not debatable. An amendment to the motion is not in order, and  
5 it is not in order to move to reconsider the vote by which the motion is  
6 agreed to or disagreed to.

7 "(j) Debate on the joint resolution is limited to not more than 2  
8 hours, to be divided equally between those favoring and those opposing  
9 the joint resolution. A motion further to limit debate is not debatable.  
10 An amendment to, or motion to recommit, the joint resolution is not in  
11 order, and it is not in order to move to reconsider the vote by which  
12 the joint resolution is agreed to or disagreed to.

13 "(k) Motions to postpone, made with respect to the discharge from  
14 committee, or the consideration of, a joint resolution with respect to  
15 benefit adjustments, and motions to proceed to the consideration of  
16 other business, are decided without debate.

17 "(l) Appeals from the decisions of the Chair relating to the  
18 application of the rules of the Senate or the House of Representatives,  
19 as the case may be, to the procedure relating to a joint resolution with  
20 respect to benefit adjustments are decided without debate.

21 "(m) The adjustment that takes effect under this section shall  
22 modify, supersede, or render inapplicable, as the case may be, to the  
23 extent inconsistent therewith--

24 "(1) all provisions of law enacted prior to the effective  
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date or dates of all or part (as the case may be) of the adjust-



1           ment; and

2               "(2) any prior recommendations or adjustments which took  
3           effect under this section or prior provisions of law.

4               "(n) The adjustment that takes effect under this section shall be  
5           printed in the Federal Register and the Code of Federal Regulations.

6               "(o) Any adjustment shall be initially made, effective on the  
7           effective date of the adjustment, under conversion rules prescribed by  
8           the President or by such agencies as the President may designate.

9               "(p) Notwithstanding any other provision of law, the President  
10          shall direct any other pay-fixing authority for employees whose total  
11          compensation is fixed and adjusted under this chapter to take into  
12          account the difference in Federal and non-Federal benefit values in  
13          making appropriate pay adjustments.

14               (g) Section 5332(a) is amended to read as follows:

15               "(a) The General Schedule, the symbol for which is GS, is the basic  
16          pay schedule from which local pay area schedules are derived for positions  
17          to which this subchapter applies. The head of each agency having General  
18          Schedule employees in a local pay area, as defined under section 5305(b)(1)  
19          of this title, shall apply to each such employee, except an employee covered  
20          by the merit pay system established under section 5402 of this title, the  
21          pay schedule established by the President for General Schedule employees in  
22          that local pay area and such pay shall be considered basic pay in accordance  
23          with the General Schedule."

24               (h) Section 5333 is amended to read as follows:

25               5333. Minimum rates for new appointments; higher rates for supervisory  
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1 of employees paid under other systems

2 "(a) New appointments shall be at the minimum rate of the  
3 appropriate grade.

4 "(b) Under regulations prescribed by the Office of  
5 Personnel Management, an employee in a position to which this  
6 subchapter applies, who regularly has responsibility for  
7 supervision (including supervision over technical aspects of  
8 the work concerned) over employees who are under a different  
9 pay system may be paid an amount greater than the  
10 highest rate of basic pay of any such employee regularly under  
11 his/her supervision. This pay adjustment shall be reduced or  
12 withdrawn when conditions warrant, as specified in regulations  
13 prescribed by the Office of Personnel Management."

14 (i) Section 5334 is amended--

15 (1) by amending subsection (b) to read as follows:

16 "(b)(1) An employee who is promoted or transferred to a  
17 position in a higher grade is entitled to basic pay at the  
18 lowest rate of the higher grade which exceeds his/her existing  
19 rate of basic pay by not less than two step increases of the grade  
20 from which he/she is promoted or transferred. If, in the case  
21 of an employee so promoted or transferred who is receiving  
22 basic pay at a rate in excess of the maximum rate of his/her  
23 grade, there is no rate in the higher grade which is at least  
24 two step increases above his/her existing rate of basic pay,

25 he/she is entitled to--

1                   "(A) the maximum rate of the higher grade; or

2                   "(B) his/her existing rate of basic pay, if that  
3                   rate is the higher.

4                   If an employee so promoted or transferred is receiving basic  
5                   pay at a rate saved to him/her under subchapter VI of this  
6                   chapter on reduction in grade, he/she is entitled to--

7                   "(i) a rate of basic pay not less than two steps  
8                   above the rate being earned under subchapter VI of this  
9                   chapter;

10                  "(ii) the rate being earned in the retained grade  
11                  under subchapter VI; or

12                  "(iii) his/her existing rate of basic pay, if that  
13                  rate is the higher.

14                  "(2) Notwithstanding the provisions of this subsection,  
15                  the Office of Personnel Management may prescribe regulations  
16                  to ensure that upon repromotion of an employee to a formerly-  
17                  held grade, the scheduled rate of pay is set at the lowest  
18                  rate which equals or exceeds the rate he/she would have attained  
19                  had he/she remained in that grade, or at the highest previous  
20                  rate, whichever is higher."; and

21                  (2) by adding at the end thereof the following new subsection--

22                         "(g) For purposes of this section, "rate of basic  
23                         pay" means the rate of pay fixed by law or administrative  
24                         action for the position held by the employee before any

1 This exclusion of additional pay applies to overtime,  
2 Sunday, and holiday pay; night differential; environmental  
3 or hazard differential; remote work site allowance;  
4 identifiable cost of living allowance; recruitment and  
5 retention allowance; or any other premium pay, differential,  
6 allowance, or add-on of any kind."

7 (j) Section 5341 is amended--

8 (1) in paragraph (3) by striking out "; and" and inserting  
9 in lieu thereof "for prevailing rate employees as defined under  
10 section 5342(a)(2)(B) and (C);"

11 (2) in paragraph (4) by striking out "rates of pay" and  
12 inserting in lieu thereof "total compensation", and at the end  
13 thereof by striking out the period and inserting in lieu thereof  
14 "; and"; and

15 (3) by adding at the end thereof the following new paragraph:

16 "(5) total compensation for prevailing rate employees as  
17 defined under section 5342(a)(2)(A) of this title will be  
18 fixed and adjusted in accordance with the principles in  
19 section 5301 of this title."

20 (k) Section 5343 is amended--

21 (1) in subsection (a) by striking out "The pay" and inserting  
22 in lieu thereof "Subject to paragraph (3) of this subsection, the  
23 pay"; and

24 (2) in subsection (a)(3) by striking out the semicolon and

1 employees as defined under section 5342(a)(2)(A) of this title, a  
2 lead agency in establishing and adjusting the wage schedules and  
3 rates shall take into account the difference in Federal and non-  
4 Federal benefit values in making those adjustments, as directed by  
5 the President pursuant to section 5309(p) of this title;"

6 (1) Section 5347(e) is amended--

7 (1) by striking the first sentence and inserting in lieu  
8 thereof "The Committee shall study the prevailing rate system  
9 and other matters pertinent to the establishment of prevailing  
10 rates under this subchapter and the benefit provisions adjusted  
11 under section 5309 of this title for employees as defined under  
12 section 5342(a)(2)(A) of this title, and shall, from time to  
13 time, advise the Office of Personnel Management thereon." and

14 (2) by adding at the end thereof the following: "In  
15 addition the Committee shall submit an annual report to the  
16 Office of Personnel Management and the President for transmittal  
17 to Congress, regarding the total compensation of employees as  
18 defined under section 5342(a)(2)(A) of this title by a date  
19 specified by the President including views and recommendations on:

20 "(1) the types of benefits to be included in benefit  
21 surveys conducted by the Bureau of Labor Statistics under  
22 section 5305(a)(1)(A) of this title;

23 "(2) the coverage of benefit surveys, applicable to  
24 these employees, conducted by the Bureau of Labor Statis-

1 but not limited to, the occupations, establishment sizes,  
2 industries, and geographical areas to be surveyed); and

3 "(3) the adjustments in benefit provisions that  
4 should be made for these employees and the relationship  
5 of the value of benefits to pay adjustments."

6 (m) Section 5361 is amended in paragraph (7) by striking out "  
7 due to lack of funds or curtailment of work,".

8 (n) Section 5363(a)(2) is repealed.

9 (o) Chapter 53 is amended by inserting after section 5375 the  
10 following new section:

11 "Sec. 5376. Special project employees

12 "(a) For the purpose of this section--

13 "(1) 'agency' has the meaning given to it by section 5102(a)  
14 of this title; and

15 "(2) 'special project employee' means an employee who is  
16 employed under an economic or educational opportunity program and  
17 who is designated as such by the head of an agency in accordance  
18 with regulations prescribed by the Office of Personnel Management.

19 "(b) The head of each agency shall pay special project employees  
20 at rates, or within limits, prescribed by that Office."

21 (p) Chapter 53 is amended by adding at the end thereof the following  
22 new subchapter:

23 "SUBCHAPTER IX--SPECIAL OCCUPATIONAL SERVICES

24 "Sec. 5391. Definitions

25 "(a) For the purpose of this subchapter, 'agency', 'employee',  
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1 'position', 'class', and 'grade' have the meanings given them by section  
2 ✓5102 of this title.

3 "(b) 'Pay level' means the applicable rate or range of rates of  
4 basic pay from which an employee is paid when the use of 'class' or  
5 'grade' is not appropriate.

6 "Sec. 5392. Special Occupational Services

7 "(a) It is the purpose of this subchapter to authorize the Office  
8 of Personnel Management to establish, in accordance with the principles  
9 in section 5301 of this title, Special Occupational Services which will  
10 include all positions in specific occupations or groups of occupations  
11 for which the Office has determined the Government would be significantly  
12 handicapped in recruiting or managing a well-qualified workforce if the  
13 positions in those specific occupations or groups of occupations were  
14 included under the General Schedule. These determinations shall be  
15 based on such factors as--

16 "(1) significantly higher pay rates prevailing in the non-  
17 Federal sector for comparable work levels in the specific occupa-  
18 tions or groups of occupations than would be paid by the Government  
19 if the occupations or groups of occupations were included under the  
20 General Schedule; or

21 "(2) significantly different methods of determining job value  
22 in the occupations or groups of occupations prevailing in the non-  
23 Federal sector which make it difficult or impractical for the  
24 Federal Government to evaluate Federal positions or adequately  
25 compensate employees in the occupations or groups of occupations.

1           "(b) The Office shall abolish a Special Occupational Service and  
2 place its positions under the General Schedule when the conditions which  
3 require its continuance no longer exist.

4           "(c) The Office may combine or modify Special Occupational Services,  
5 as appropriate.

6           "(d) In carrying out its function under this section, the Office  
7 shall consult with representatives of employee organizations which  
8 represent, in the case of labor organizations, or include in their  
9 membership, in the case of other organizations, substantial numbers of  
10 employees in positions in the occupations or groups of occupations to be  
11 included in the Special Occupational Service, to consider their views  
12 and recommendations regarding the establishment, modification or abolishment  
13 of such Service and such other matters as considered to be appropriate  
14 by the Office.

15       "Sec. 5393. Job evaluation or alignment plans

16           "(a) Notwithstanding the provisions of chapter 51 of title 5, United  
17 States Code, the Office of Personnel Management may establish job  
18 evaluation or alignment plans as appropriate for each Special Occupational  
19 Service.

20           "(b) The job evaluation or alignment plans may be based on a  
21 position classification system, in the same manner as the General  
22 Schedule, or may be based on other methods as determined to be appropriate  
23 by the Office.

24       "Sec. 5394. Compensation plan

25           "(a) The total compensation for each of the Special Occupational  
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1 Services shall be--

2 "(1) fixed and from time to time adjusted consistent with the  
3 public interest; and

4 "(2) maintained generally in line with pay rates within  
5 appropriate local or national pay areas for non-Federal work requiring  
6 similar levels of skills and abilities taking into account the  
7 difference in Federal and non-Federal benefit values in making  
8 those adjustments, as directed by the President pursuant to section  
9 5309(p) of this title.

10 "(b) The Office of Personnel Management shall establish, administer,  
11 and abolish the pay-setting procedures for each of the Special Occupational  
12 Services in accordance with the purposes and policies in section 5301 of  
13 this title. These procedures shall provide for--

14 "(1) definition of the boundaries of the pay area or areas  
15 determined by the Office to be appropriate for pay rate determination;

16 "(2) collection, analysis, and use of data which shall be  
17 provided by the Bureau of Labor Statistics or other source as  
18 determined to be appropriate by the Office:

19 "(3) such participation by agencies as the Office considers  
20 appropriate;

21 "(4) periodic review of the pay rates for each of the schedules  
22 established under section 5392 of this title to ensure continued  
23 adherence to the purposes and policies established in section 5301  
24 of this title; and

25 "(5) taking into account the difference in Federal and non-

1 Federal benefit values in making those adjustments, as directed by  
2 the President pursuant to section 5309(p) of this title.

3 "(c) The Office shall initially establish and thereafter adjust or  
4 abolish, in accordance with the provisions of this section, a pay  
5 schedule or schedules for each of the Special Occupational Services, the  
6 designations for which shall be determined by the Office. Each pay  
7 schedule shall have a range of basic pay for each grade or pay level.

8 "(d) Each employee determined to be included in one of the Special  
9 Occupational Services shall be paid under the appropriate schedule in  
10 accordance with the provisions of this subchapter.

11 "(e) Each agency shall identify those employees under its jurisdiction  
12 covered by each Special Occupational Service and shall place each such  
13 employee in the appropriate grade or pay level in conformance with  
14 standards or other instructions published by the Office of Personnel  
15 Management. When facts warrant, an agency may change an employee whom  
16 it has placed in a grade or pay level under this section from that grade  
17 or pay level to another grade or pay level. Subject to subchapter VI of  
18 chapter 53 of this title, these actions of an agency are the basis for  
19 pay and personnel transactions until changed by certificate of the  
20 Office of Personnel Management.

21 "(f) For each Special Occupational Service, the Office shall pres-  
22 cribe policies for fixing the rates to be paid employees upon appointment,  
23 transfer, change of grade or pay level, or other personnel action and,  
24 as appropriate, conditions under which employees shall advance through  
25 the range of each grade or pay level.

"(g) For each Special Occupational Service, the Office shall--

"(1) determine the applicability of premium pays, such as overtime pay (or compensatory time off in lieu thereof), Sunday pay, holiday pay, standby or on-call pay, hazardous duty pay, or night differential pay;

"(2) prescribe the conditions under which payments of such premium pays shall be made; and

"(3) prescribe the rates of such payments.

"Sec. 5395. Annual report

"The Office of Personnel Management shall make an annual report on the operation of the Special Occupational Services established under this subchapter to the President for transmittal to the Congress. "Sec. 5396. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(q) The analysis of chapter 53 is amended--

(1) in the chapter title by striking out "PAY RATES AND SYSTEMS" and inserting in lieu thereof "FEDERAL COMPENSATION PROGRAM";

(2) in the heading for subchapter I by striking out "PAY COMPARABILITY SYSTEM" and inserting in lieu thereof "TOTAL COMPENSATION COMPARABILITY SYSTEM";

(3) by striking out item "5301. Policy." and inserting in lieu thereof "5301. Definition; policy; purpose.";

1 (5) in item 5305 by striking out "pay" and inserting in lieu  
2 thereof "compensation";

3 (6) by striking out item "5306. Advisory Committee on Federal  
4 Pay." and inserting in lieu thereof "5306. Advisory Committee on  
5 Federal Compensation.";

6 (7) by inserting after the item relating to section 5308 the  
7 following new item:

8 "5309. Adjustment of benefits; effect on pay-fixing authorities.";

9 (8) by inserting after the item relating to section 5375 the  
10 following new item: "5376. Special project employees."; and

11 (9) by adding at the end thereof the following new item:

12 "SUBCHAPTER IX--SPECIAL OCCUPATIONAL SERVICES

13 "5391. Definitions.

14 "5392. Special Occupational Services.

15 "5393. Job evaluation or alignment plans.

16 "5394. Compensation plan.

17 "5395. Annual report.

18 "5396. Regulations.".

19 Sec. 3. Prevailing Rate Systems Amendments

20 (a) Section 5343 is amended--

21 (1) in subsection (a)(3) by striking out "(d)" and inserting  
22 in lieu thereof "(5)";

23 (2) by amending subsection (b) to read as follows:

24 "(b) The Office of Personnel Management shall establish

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25 an annual schedule of wage surveys, provided that a full-scale

1 wage survey shall be conducted in each wage area at least  
2 every third year.";

3 (3) in subsection (c)(1) by striking out "subject to  
4 subsection (d) of this section," and by striking out "private" each  
5 place it appears and inserting in lieu thereof "non-Federal";

6 (4) in subsection (c) by redesignating paragraphs (5) and (6)  
7 as paragraphs (6) and (7) respectively;

8 (5) by inserting after subsection (c)(4) the following new  
9 paragraph:

10 "(5) for requirements for the development of proper differ-  
11 entials for work performed at night, provided that the differentials  
12 under this paragraph shall be part of basic pay"; and

13 (6) by repealing subsections (d), (e), and (f).

14 (b) A retained rate of pay is authorized for a prevailing rate  
15 employee, as defined by section 5342(a)(2) of title 5, United States  
16 Code, whose basic rate of pay would otherwise be reduced as a conse-  
17 quence of the initial application of this Act.

18 (c) The changes made by this Act with respect to an affected  
19 employee shall not act to reduce to below 3 percent the amount of such  
20 employee's wage adjustment pursuant to the first full-scale wage survey  
21 ordered on or after October 1, 1979. Thereafter, an employee whose rate  
22 of basic pay has been retained under subsection (b) shall receive one-  
23 half of each wage schedule adjustment applicable to the maximum rate of  
24 his/her grade so long as he/she (1) continues in the same agency without

1 higher scheduled rate of pay by operation of the Federal Wage System;  
2 and (3) is not demoted or reassigned (A) for personal cause, or (B) at  
3 his/her request.

4 (d) The Office of Personnel Management shall prescribe such regula-  
5 tions as may be necessary to carry out the provisions of this section.

6 Sec. 4. Premium Pay and Allowances Amendments

7 (a) Section 4109(a)(1) of this title is amended to read as follows:

8 "(1) pay all or part of the pay of an employee of the agency  
9 for a period of training under this chapter, except that overtime,  
10 holiday, or night differential pay may be paid to an employee for  
11 a period of training only under the following conditions:

12 "(A) the employee is a nonexempt employee as defined in  
13 section 5541 of this title; and

14 "(B) the period of training is by, in, or through a  
15 Government facility; and".

16 (b) Section 5541 is amended--

17 (1) in paragraph (2)--

18 (A) at the end of subparagraph (B) by striking out

19 "and";

20 (B) after subparagraph (C) by inserting the following  
21 new subparagraphs:

22 "(D) a prevailing rate employee in or under the  
23 Office of the Architect of the Capitol who is paid on a  
24 daily or hourly basis and who is not subject to chapter 51

- 1                   "(E) a prevailing rate employee as defined by  
2                   section 5342(a)(2)(B) of this title;"
- 3                   (C) by repealing subparagraph (xi);
- 4                   (D) at the end of subparagraph (xv) by striking out  
5                   "or";
- 6                   (E) at the end of subparagraph (xvi) by striking out the  
7                   period and inserting in lieu thereof a semicolon; and
- 8                   (F) after subparagraph (xvi) by inserting the following  
9                   new subparagraphs:
- 10                   "(xvii) an employee whose pay is fixed and adjusted under  
11                   subchapter IX of chapter 53 of this title; or
- 12                   "(xviii) a special project employee as defined by section 5376  
13                   of this title."; and
- 14                   (2) after paragraph (2) by inserting the following new  
15                   paragraphs:
- 16                   "(3) an 'exempt employee' is an employee who is not subject  
17                   to the overtime pay provisions of section 7 of the Fair Labor  
18                   Standards Act of 1938, as amended;
- 19                   "(4) a 'nonexempt employee' is an employee who is subject  
20                   to the overtime pay provisions of section 7 of the Fair Labor  
21                   Standards Act of 1938, as amended;
- 22                   "(5) 'hours of work' includes, but is not limited to, all  
23                   hours during which an employee is suffered or permitted to work and  
24                   all hours during which an employee is authorized to be absent from

1           "(6) 'hourly regular rate of pay' means the total remunera-  
2           tion paid to an employee in a workweek divided by all hours worked  
3           by the employee during the workweek; and

4           "(7) 'total remuneration' includes all remuneration for employ-  
5           ment paid to, or on behalf of, an employee, except--

6           "(A) payments as gifts or rewards for services which are  
7           not measured by or dependent on hours worked, production, or  
8           efficiency;

9           "(B) payments for travel expenses or other similar expenses  
10          incurred by an employee in furtherance of an agency's interest  
11          which are not related to hours worked;

12          "(C) payments at the sole discretion of an agency which  
13          are not related to hours worked;

14          "(D) contributions by an agency to a fund for retire-  
15          ment, insurance or similar benefits;

16          "(E) extra compensation provided by a premium rate paid  
17          for hours worked by an employee in excess of the normal  
18          workweek applicable to the employee;

19          "(F) extra compensation provided by a premium paid for  
20          hours worked on a Sunday or a holiday which is at least one  
21          and one-half times an employee's rate of pay for work performed  
22          in nonovertime hours; or

23          "(G) extra compensation provided by a night pay differ-  
24          ential which is at least one and one-half times an employee's



1 (c) Section 5542 is amended--

2 (1) by amending subsection (a) to read as follows:

3 "(a) For a full-time employee, hours of work outside  
4 the employee's basic workweek as defined in section 6101(a)  
5 of this title is overtime work. For a part-time employee,  
6 hours of work outside the employee's scheduled tour of duty  
7 and which exceeds 40 hours in an administrative workweek is  
8 overtime work. For an intermittent employee, hours of work  
9 which exceeds 40 hours in an administrative workweek is overtime  
10 work. An employee shall be paid for overtime work, except as  
11 otherwise provided by this subchapter, at the following rates:

12 "(1) For an exempt employee, pay for overtime  
13 work shall be only under such conditions and at such  
14 rates as may be prescribed by the Office of Personnel  
15 Management.

16 "(2) For a nonexempt employee, the overtime hourly  
17 rate of pay is an amount equal to one and one-half times  
18 the hourly regular rate of pay of the employee."; and

19 (2) by amending subsection (b)(2) to read as follows:

20 "(2) for a nonexempt employee, time spent in a travel  
21 status away from the official duty station of an employee is  
22 hours of work if--

23 "(A) the travel is performed during the scheduled  
24 tour of duty of the employee; or

1 tour of duty of the employee and the employee is required to  
2 (i) perform work while traveling, (ii) travel as a passenger  
3 on a one-day assignment, or (iii) travel as a passenger on an  
4 overnight assignment during hours on nonworkdays that correspond  
5 to the scheduled tour of duty of the employee on normal workdays."

6 (d) Section 5543 is amended to read as follows:

7 "The head of an agency may--

8 "(1) on request of an employee, grant the employee  
9 compensatory time off from his/her scheduled tour of duty  
10 instead of payment for an equal amount of time spent in  
11 irregular or occasional overtime work; and

12 "(2) provide that an exempt employee shall be granted  
13 compensatory time off from his/her scheduled tour of duty  
14 equal to the amount of time spent in irregular or occasional  
15 overtime work instead of being paid for that work under  
16 section 5542 of this title."

17 (e) Section 5544 is repealed.

18 (f) Section 5545 is amended--

19 (1) in subsection (c)(1) by striking out "(or, for a position  
20 described in section 5542(a)(3) of this title, of the basic pay of  
21 the position)"; and

22 (2) by inserting after subsection (d) the following new  
23 subsection:

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25 "(e) The provisions of this section shall not apply to

employees whose pay is fixed and adjusted from time to time in

1 accordance with prevailing rates under subchapter IV of  
2 chapter 53 of this title or by a wage board or similar  
3 administrative authority serving the same purpose."

4 (g) Section 5546 is amended--

5 (1) by amending subsection (a) to read as follows:

6 "(a) An employee who performs nonovertime work during  
7 a period of service, any part of which is performed on  
8 Sunday, is entitled to pay for the entire period of service  
9 at the rate of his/her basic pay, plus premium pay  
10 at a rate equal to 25 percent of his/her rate of basic pay,  
11 except that an employee who performs nonovertime work during  
12 more than one period of service on Sunday shall be entitled to  
13 premium pay under this subsection only for the number of  
14 nonovertime hours actually worked on that Sunday or for one  
15 period of service, whichever is greater."; and

16 (2) in subsection (b)--

17 (A) by inserting after "performs" the following:

18 "nonovertime";

19 (B) by inserting a period after "holiday work"; and

20 (C) by striking out "which is not--(1) in excess of  
21 8 hours; or (2) overtime work is defined by section 5542(a) of  
22 this title".

23 (h) Section 5547 is amended to read as follows:

24 "An exempt employee may be paid premium pay under sections 5542,

1           prescribed by the Office of Personnel Management only to the extent  
2           that the payment does not cause the employee's aggregate rate of  
3           pay to exceed a maximum rate to be prescribed by the Office, where  
4           applicable."

5           (i) Section 5548(b) is amended by striking out "sections" and inserting  
6           in lieu thereof "section" and by striking out "and 5550".

7           (j) Section 5550 is repealed.

8           (k) Section 5596 is amended in subsection (b)(1) by striking out  
9           "or reduction" and inserting in lieu thereof ", reduction or denial".

10          (1) Section 5941(b) is amended by inserting after "of this title"  
11          the following: ", or an employee whose pay is set in accordance with  
12          the rates of a General Schedule locality pay schedule established under  
13          section 5305 of this title or a local Special Occupational Service pay  
14          schedule established under subchapter IX of chapter 53 of this title,".

15          (m) Chapter 59 is amended by adding at the end thereof the following  
16          new section:

17          "Sec. 5949. Staffing differentials

18          "(a) For the purpose of this section, "employee" and "position"  
19          include employees and positions under the statutory compensation systems  
20          as defined in section 5301(e) of this title [and such other compensation  
21          systems as the Office of Personnel Management may prescribe.] *Change to*  
*and add CM*

22          "(b) Notwithstanding the provisions of section 5333(a) of this  
23          title, upon determining that the Government is experiencing significant  
24          difficulty in recruiting or retaining well-qualified individuals, the Office  
25          Approved For Release 2001/09/01 : CIA-RDP81-00314R000600010007-3  
may establish and thereafter adjust or abolish staffing differentials for

1 one or more employees or positions, as occupationally, organizationally,  
2 and geographically appropriate.

3 "(c) Under service agreements or such other procedures as the Office  
4 shall prescribe, staffing differentials established under this section  
5 may be paid in one or more lump-sums or in the same manner and at the same  
6 time as basic pay.

7 "(d) Any differential paid under this section is in addition to basic  
8 pay and is not an equivalent increase within the meaning of section 5335(a,  
9 of this title.

10 "(e) Except as otherwise provided by a service agreement or other  
11 procedure, each differential paid under this section shall be reviewed periodic  
12 and reduced or abolished as warranted.

13 "(f) The Office of Personnel Management shall prescribe regulations to  
14 carry out the provisions of this section."

15 (n) The analysis of chapter 59 is amended by adding at the end  
16 thereof the following new item: "5949. Staffing differentials."

17 Sec. 5. Attendance and Leave Amendments

18 (a) Section 6101 is amended--

19 (1) by amending subsection (a)(1) to read as follows:

20 "(a)(1) For the purpose of this section 'agency' and  
21 'employee' have the given meaning them by section 5541 of this  
22 title.";

23 (2) in subsection (a)(2)(A) by striking out "administrative";

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(3) by repealing subsection (a)(3)(D);

(4) in subsection (a)(5) by inserting at the end thereof the

1 following: "The Administrative Office of the United States Court  
2 may apply this subsection to employees under the judicial branch."; and  
3 (5) by repealing subsection (b)(1).  
4 (b) Section 6103 is repealed.  
5 (c) Section 6104 is repealed.  
6 (d) Section 6105 is repealed.  
7 (e) Chapter 63 is amended by adding at the end thereof the following  
8 new sections:  
9 "Sec. 6327. Holidays; closures by Executive or administrative order  
10 "(a) The following are legal public holidays:  
11 New Year's Day, January 1.  
12 Washington's Birthday, the third Monday in February.  
13 Memorial Day, the last Monday in May.  
14 Independence Day, July 4.  
15 Labor Day, the first Monday in September.  
16 Columbus Day, the second Monday in October.  
17 Veterans Day, November 11.  
18 Thanksgiving Day, the fourth Thursday in November.  
19 Christmas Day, December 25.  
20 "(b) For the purpose of statutes relating to pay and leave of  
21 employees whose tour of duty is scheduled on 5 consecutive workdays and  
22 is followed by 2 consecutive nonworkdays, with respect to a legal public  
23 holiday and any other day declared to be a holiday by Federal statute or  
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Executive order, the following rules apply:

1 weekly nonworkday of an employee, the workday immediately before  
2 such nonworkday is a legal public holiday;

3 "(2) instead of a holiday that occurs on the second consecutive  
4 weekly nonworkday of an employee, the workday immediately after  
5 such nonworkday is a legal public holiday.

6 "Except as provided in subsection (c) of this section, the Office of Personnel  
7 Management shall prescribe regulations governing pay and leave treatment  
8 for employees whose tour of duty is scheduled other than on 5 consecutive  
9 workdays when a legal public holiday falls on a nonworkday.

10 "(c) For the purpose of statutes relating to pay and leave of  
11 employees, with respect to a legal public holiday and any other day  
12 declared to be a holiday by Federal statute or Executive order, the  
13 following rules apply for determining the holiday for a full time  
14 employee for whom the head of an agency has established the first  
15 40 hours of duty performed within a period of not more than six days  
16 of the administrative workweek as his basic workweek because of the  
17 impracticability of prescribing a regular schedule of definite hours  
18 of duty for each workday:

19 "(1) if a holiday occurs on Sunday, the head of the agency  
20 shall designate in advance either the Sunday or Monday as the  
21 employee's holiday and the employee's basic 40-hour tour of duty  
22 shall be deemed to include eight hours on the day designated as  
23 the employee's holiday;

24 "(2) if a holiday occurs on Saturday, the head of the agency  
25 shall designate in advance either the Saturday or the preceding

1 Friday as the employee's holiday and the employee's basic 40-hour  
2 tour of duty shall be deemed to include eight hours on the day  
3 designated as the employee's holiday;

4 "(3) if a holiday occurs on any other day of the week, that  
5 day shall be the employee's holiday, and the employee's basic  
6 40-hour tour of duty shall be deemed to include eight hours on  
7 that day; or

8 "(4) if a holiday is less than a full day, proportionate credit  
9 will be given under paragraphs (1), (2), or (3) of subsection (c) of  
10 this section.

11 "(d) If the workday of any employee covers portions of two calendar  
12 days and the employee would, except for this subsection, ordinarily  
13 be excused from work scheduled for the hours of any calendar day  
14 on which a holiday falls, the employee shall instead be excused from  
15 work on the entire workday which commences on any such calendar day.

16 "(e) In administering the provisions of law relating to pay and leave  
17 of absence, the workdays referred to in subsections (b), (c), and (d) of this  
18 section shall be treated as holidays in lieu of the corresponding calendar hol  
19 'Workday' is defined as those hours which comprise in sequence the employee's  
20 regular daily tour of duty within any 24-hour period, whether falling  
21 entirely within one calendar day or not. 'Holiday' is defined as those  
22 days listed in subsection (a) of this section or any other calendar day design  
23 as a holiday by Federal statute or Executive order.

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(1) January 20 of each fourth year after 1999, Inauguration Day,  
25 is a legal public holiday for the purpose of statutes relating to pay



1 and leave of employees as defined by section 2105 of this title employed  
2 in the District of Columbia, Montgomery and Prince Georges Counties in  
3 Maryland, Arlington and Fairfax Counties in Virginia, and the cities of  
4 Alexandria and Falls Church in Virginia. When Inauguration Day  
5 falls on Sunday, the next succeeding day selected for the public observance  
6 of the inauguration of the President is a legal public holiday for the  
7 purpose of this subsection for employees who are scheduled to perform  
8 work on that day.

9 "(g) When an employee as defined by section 2105 of this title who  
10 has a scheduled tour of duty and whose appointment is not limited to 90  
11 days or less or who has been currently employed for a continuous period  
12 of 90 days under one or more appointments without a break in service is  
13 relieved or prevented from working on a day--

14 "(1) solely because of the occurrence of a legal public  
15 holiday under this section, or a day declared a holiday by Federal  
16 statute or Executive order; and

17 "(2) on which agencies are closed by Executive order;  
18 the employee is entitled to the same pay for that day as for a day on  
19 which an ordinary day's work is performed without loss of, or reduction  
20 in, leave to which the employee is otherwise entitled, credit for time  
21 or service, or performance or efficiency ratings.

22 "(h) An activity or a portion of an activity may, by administrative  
23 order, be closed and employees dismissed when work cannot be performed  
24 because of--

1           "(2) the interruption of normal operations of the establish-  
2           ment by events beyond the control of management or employees; or

3           "(3) managerial reasons which require the closing of an  
4           establishment or portions thereof for short periods of time.

5           "The dismissal of employees under the provisions of this subsection  
6           shall be designated as administrative dismissal. When such dismissals  
7           are authorized, the employee may be granted administrative leave or may  
8           be required to use annual leave or leave without pay in accordance with  
9           regulations prescribed by the Office of Personnel Management.

10          "(i) An Executive department may not be closed as a mark to the  
11          memory of a deceased former official of the United States.

12          "Sec. 6328. Administrative leave

13          "In accordance with regulations prescribed by the Office of Personnel  
14          Management an employee may be excused without loss of, or reduction in,  
15          pay, leave to which the employee is otherwise entitled, credit for time  
16          or service, or performance or efficiency ratings--

17          "(1) for limited periods of time--

18                 "(A) to participate in activities determined to be of interest  
19                 or concern to the Federal Government; or

20                 "(B) for other reasons determined by management to warrant  
21                 excusal;

22          "(2) for extended periods of time under extraordinary or unique  
23          circumstances or conditions, with the prior approval of the Office  
24          of Personnel Management; or

1 "Sec. 6329. Regulations

2 "Unless otherwise provided in this subchapter, the Office of Person-  
3 nel Management may prescribe regulations for the administration of this  
4 subchapter.

5 "Sec. 6330. Other leave; nonduty status

6 "The Office of Personnel Management is authorized to provide for,  
7 and otherwise regulate, any other type of leave or nonduty status as may  
8 be necessary for the good of the Executive service."

9 (f) Chapter 63 is further amended--

10 (1) in the catchline by adding "and Other Absences";

11 (2) in the heading of subchapter II by striking out "Other  
12 Paid Leave" and inserting in lieu thereof "Other Leave and Absences";

13 (3) in section 6302(b) by striking out "basic administrative  
14 workweek" and inserting in lieu thereof "scheduled tour of duty"; and

15 (4) in section 6322 by repealing subsection (c).

16 (g) The analysis of chapter 61 is amended by striking out--

17 (1) "6103. Holidays.";

18 (2) "6104. Holidays; daily, hourly, and piece-work basis  
19 employees."; and

20 (3) "6105. Closing of Executive departments."

21 (h) The analysis of chapter 63 is amended--

22 (1) in the heading of subchapter II by striking out "Other  
23 Paid Leave" and inserting in lieu thereof "Other Leave and Absences";

24 and

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(2) by adding at the end thereof the following new items:

1 (A) "6327. Holidays; closures by Executive or adminis-  
2 trative order.";

3 (B) "6328. Administrative leave.";

4 (C) "6329. Regulations."; and

5 (D) "6330. Other leave; nonduty status.".

6 Sec. 6. Premium Pay Special Authority

7 (a) Subpart D of Part III of title 5, United States Code, is  
8 amended by adding the following new chapter:

9 "Chapter 50 - Special Authority

10 "Sec. 5001. Premium pay and allowances special authority

11 "(a) For the purpose of this section, 'employee' means a civil  
12 service employee in the executive branch of the Government of the  
13 United States, *but does not include an employee of the CIA.*

14 "(b) Notwithstanding any other provision of law, the President may  
15 establish, modify, consolidate, or abolish Federal premium pay and  
16 allowances provisions, [except those relating to employment in foreign  
17 areas] pertaining to an employee in order to eliminate conflicting or  
18 contradictory requirements, provide for adjustment of Federal provisions  
19 in light of the non-Federal sector practices and any special requirement  
20 of the Federal service, or provide equitable premium compensation to all  
21 Federal employees working under similar circumstances.

22 "(c) The President's Compensation Agent, as designated under  
23 section 5305 of this title, shall periodically review--

24 "(1)(A) all premium pay provisions (such as overtime, night  
25 differentials, hazard pay, Sunday and holiday premiums, and annual

premium pay); and

"(B) all allowances (such as uniforms, quarters, overseas and duty at remote worksites);

pertaining to executive agencies and their employees, to--

"(2)(A) determine what premium pay and allowances practices are currently justified in light of practices in the non-Federal sector and any special requirements of the Federal service; and

"(B) determine if one or more premium pays or allowances should be established, modified, consolidated, or eliminated.

"(d) In the exercise of the function assigned in subsection (c) of this section, the Agent shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.

"(e) The Agent shall recommend to the President such changes in premium pay and allowances as it determines to be appropriate.

"(f) Action taken by the President to establish, modify, consolidate, or abolish Federal premium pay and allowances provisions shall modify, supersede, or render inapplicable, as appropriate, any provision of law or prior action by the President under this section which is inconsistent with the action taken by the President.

"(g) The President shall transmit a report to the Congress when he takes action under this section."

(b) The table of chapters for part III of title 5, United States

1 following new item:

2 "Chapter 50 - Special Authority".

3 Sec. 7. Technical and Conforming Amendments

4 Title 5, United States Code, is amended as follows:

5 (1) Section 2105(c)(1) is amended by striking out "subchapter IV  
6 of chapter 53 and sections 5550 and" and inserting in lieu thereof  
7 "chapter 50, subchapter IV of chapter 53, subchapter  
8 V of chapter 55, chapter 61, and section";

9 (2) Section 5102(c)(26) is amended by striking out "or" at  
10 the end of the paragraph; section 5102(c)(27) is amended by striking  
11 out the period at the end of the paragraph and inserting in lieu  
12 thereof "; or "; and section 5102 is further amended by adding at  
13 the end thereof the following new paragraph:

14 "(28) a special project employee paid under section 5376 of  
15 this title.";

16 (3) Section 5402(a) is amended to read as follows:

17 "(a) In accordance with the purpose set forth in section  
18 5401(a)(1) of this title, the Office of Personnel Management shall  
19 establish a merit pay system which shall provide for a range of  
20 basic pay for each grade to which the system applies in each local  
21 pay area, which range shall be limited by the minimum and maximum  
22 rates of basic pay for each such grade under each local pay schedule  
23 under chapter 53 of this title. Pay may not be paid, by reason of  
24 any provision of this chapter, at a rate in excess of the rate of  
25 basic pay for level V of the Executive Schedule."; and

1           (4) Section 5504 is amended by striking out "basic administra-  
2       tive workweek" each time it appears and inserting in lieu thereof  
3       "basic workweek".

4       Sec. 8. Pay and Benefits Saving

5           (a) Notwithstanding the provisions of subchapter VI of chapter 53  
6       of title 5, United States Code, the Office of Personnel Management shall  
7       prescribe regulations providing pay retention, without time limit, for  
8       employees whose pay would otherwise be reduced by reason of the initial  
9       application of the provisions of this Act. Any employee receiving  
10      retained pay under this Act shall receive one-half of the amount of each  
11      subsequent increase in the maximum rate of the grade or pay level to  
12      which assigned until the retained pay is equalled or exceeded by the  
13      maximum step of the grade or pay level to which assigned.

14          (b) Any changes in classification or pay required by the initial  
15      implementation of this Act are not adverse actions as defined in chapter  
16      75 of title 5, United States Code.

17          (c) During the first five years following the date of enactment of  
18      this Act there will be no downward adjustment of benefit provisions  
19      pursuant to section 5309(a) of this title.

20          (d) The pay of special project employees as defined by section  
21      5376 of title 5, United States Code, on the rolls on the effective date  
22      of this Act shall not be reduced by reason of enactment of this legislation.

23      Sec. 9. Effective Date

24          (a) Except for the provisions of section 3 of this Act, the provisions  
25      of this Act shall be placed into effect on the day after the President

1 may direct within a 3-year period that follows the date of enactment by  
2 not more than 2 years.

3 (b) The provisions of section 3 of this Act are effective with  
4 respect to each individual wage area defined by the Office of Personnel  
5 Mangement under section 5343(a)(1) of title 5, United States Code, on  
6 the effective date of the wage schedule established pursuant to the  
7 first full-scale wage survey ordered on or after October 1, 1979, except  
8 that paragraph (2) of subsection (a) will be effective on October 1, 1979.

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TRANSMITTAL SLIP		DA.
TO:	[Redacted]	
ROOM NO.	BUILDING	
5858		
REMARKS:		
<p>DD/Pers ✓</p> <p>DD/Pers 27 APR 1979</p> <p>DD/Pers/PC [Signature]</p> <p>Paul -</p> <p>Here it is again!</p> <p>We're got to see the</p> <p>current legislation if OLC has</p> <p>not yet given us a copy [Signature]</p>		
FROM:		
OLC		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241  
FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

STATINTL

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. DD/Pers		26 MAR 1979
2. <del>D/Pers</del>		
3. DD/Pers/PC — Frank L. Lim		
4. <i>Getting worried!</i>		
5. <i>Bay</i>		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

**REMARKS**

Agency expresses unhappiness  
on recent draft of Classification and  
Compensation Act of 1979.

K

**DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions**

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Exec Asst to D/Pers	Phone No.